

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSHUA J. GIPSON,

Petitioner

v.

JEREMY BEAN, *et al.*,

Respondents

Case No. 2:23-cv-00099-CDS-DJA

SCHEDULING ORDER

On February 7, 2023, I granted petitioner Joshua Gipson's motion for appointment of counsel and gave the Federal Public Defender 30 days to (1) undertake direct representation of petitioner by filing a notice of appearance or (2) indicate the office's inability to represent petitioner in these proceedings. ECF No. 10. On March 8, 2023, the Federal Public Defender filed a notice of appearance. ECF No. 11.

It is therefore ordered that the Federal Public Defender, through Alicia R. Intriago, Esq., is appointed as counsel for petitioner Joshua Gipson pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent petitioner in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

It is further ordered that petitioner shall have up to and including 90 days from entry of this order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Petitioner remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting any extension thereof, the court makes no finding or representation that the petition, any amendments thereto, and/or any claims contained therein are not subject to dismissal as untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

1 It is further ordered that respondents shall file a response to the amended petition,
2 including potentially a motion to dismiss, within 60 days of service of an amended petition and
3 that petitioner may file a reply thereto within 30 days of service of the answer. The response and
4 reply time to any motion filed by either party, including a motion filed in lieu of a pleading, shall
5 be governed instead by Local Rule LR 7-2(b).

6 It is further ordered that any procedural defenses raised by respondents to the counseled
7 amended petition shall be raised together in a single consolidated motion to dismiss. In other
8 words, the court does not wish to address any procedural defenses raised herein either in
9 seriatum fashion in multiple successive motions to dismiss or embedded in the
10 answer. Procedural defenses omitted from such motion to dismiss will be subject to potential
11 waiver. Respondents shall not file a response in this case that consolidates their procedural
12 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as
13 to any unexhausted claims clearly lacking merit. If respondents do seek dismissal of
14 unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to dismiss
15 not in the answer; and (b) they shall specifically direct their argument to the standard for
16 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir.
17 2005). In short, no procedural defenses, including exhaustion, shall be included with the merits
18 in an answer. All procedural defenses, including exhaustion, instead must be raised by motion to
19 dismiss.

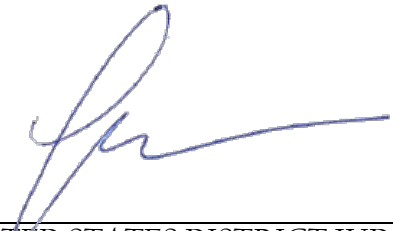
20 It is further ordered that, in any answer filed on the merits, respondents shall specifically
21 cite to and address the applicable state court written decision and state court record materials,
22 if any, regarding each claim within the response as to that claim.

23 It is further ordered that any state court record and related exhibits filed herein by either
24 petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits
25 by number. The CM/ECF attachments that are filed further shall be identified by the number or
26 numbers of the exhibits in the attachment. If the exhibits filed will span more than one ECF
27 number in the record, the first document under each successive ECF number shall be either
28 another copy of the index, a volume cover page, or some other document serving as a filler, so

1 that each exhibit under the ECF number thereafter will be listed under an attachment number
2 (i.e., attachment 1, 2, etc.).

3 It is further ordered that the hard copy of any exhibits filed by either counsel shall be
4 delivered—for this case—to the Reno Clerk's Office. Courtesy copies of exhibits shall not be
5 provided.

6 DATED: March 8, 2023

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UNITED STATES DISTRICT JUDGE